

रजिस्टर्ड नं० ल०-३३/एस० एम० १४.



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, शनिवार, 3 जून, 1989/13 अप्रैल, 1911

हिमाचल प्रदेश सरकार

VIDHAN SABHA SECRETARIAT

NOTIFICATION

Shimla-4, the 31st March, 1989

No. 1-12/89-VS.—In pursuance to rule 135 of the Rules of Procedure and Conduct of Business of the Himachal Pradesh Legislative Assembly, 1973. The Himachal Pradesh Land

Revenue (Amendment) Bill, 1989 (Bill No. 3 of 1989) having been introduced on the 31st March, 1989, in the Himachal Pradesh Vidhan Sabha, is hereby published in the Gazette.

Sd/-
Secretary,
H. P. Vidhan Sabha.

1989 का विधेयक संख्यांक 3.

हिमाचल प्रदेश भू-राजस्व (संशोधन) विधेयक, 1989

(विधान सभा में यथा पुरस्थापित)

हिमाचल प्रदेश भू-राजस्व अधिनियम, 1954 (1954 का 6) का और संशोधन करने के लिए विधेयक।

भारत गणराज्य के चालीसवें वर्ष में हिमाचल प्रदेश विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित हो :—

1. इस अधिनियम का संक्षिप्त नाम हिमाचल प्रदेश भू-राजस्व (संशोधन) अधिनियम, 1989 है।

संक्षिप्त
नाम।

1954 का 6 2. हिमाचल प्रदेश भू-राजस्व अधिनियम, 1954 (जिसे इसमें इसके पश्चात् मूल अधिनियम कहा गया है) की धारा 163 में—

(क) उप-धारा (1) के खण्ड (घ) में आए “five hundred” और “one thousand” शब्दों के स्थान पर क्रमशः “one thousand” और “two thousand” शब्द प्रतिस्थापित किए जाएंगे;

(ख) उप-धारा (2) के पश्चात् निम्नलिखित उप-धारा (3), उप-धारा (4), उप-धारा (5) और उप-धारा (6) जोड़ी जाएंगी, अर्थात् :—

“(3) When there is a question as to title or to the adverse possession, wherein the possession is claimed by an encroacher for a period beyond thirty years in relation to the land from which ejectment is made or is to be made under this section, the Revenue Officer, not below the rank of an Assistant Collector of the First Grade, shall proceed to determine the question, as if he were a civil court and shall exercise all such powers as are exercisable by a civil court.

(4) For the determination of the question under sub-section (3), the Revenue Officer shall follow the same procedure as is applicable to the trial of an original suit by a civil court, and he shall record a judgement and decree containing the particulars required by the Code of Civil Procedure, 1908 to be specified therein.

(5) An appeal from the decree of the Revenue Officer made under sub-section (4) shall lie to the District Judge as if that decree were a decree of a Subordinate Judge in an original suit.

(6) A further appeal from the appellate decree of a District Judge upon an appeal under sub-section (5), shall lie to the High Court only if the High Court is satisfied that a substantial question of law is involved.”; and

(ग) विद्यमान उप-धारा (3) को उप-धारा (7) के रूप में पुनः अंकित किया जाएगा।

3. धारा 171 की उप-धारा (2) के विद्यमान खण्ड (xxv) को (xxvi) धारा 171 के रूप में पुनः अंकित किया जाएगा और इस प्रकार पुनः अंकित खण्ड से पूर्व निम्नलिखित खण्ड अन्तःस्थापित किया जाएगा, अर्थात् :—

“(xxv) any question, as to any land or any right to, or title or interest

in, the land which is an encroached land or in relation to which any person claims that it has vested or is deemed to have vested in him and that he cannot be ejected therefrom under sub-section (1) of section, 163; and".

उद्देश्यों और कारणों का कथन

हिमाचल प्रदेश राजस्व अधिनियम, 1954 की धारा 163, राजस्व अधिकारियों को, उन व्यक्तियों को बेदखल करने के लिए सशक्त करती है जो मरकारी या सामान्य भूमि पर अधिकमण (इन्क्रोच) करते हैं, किन्तु यह देखा गया है कि अधिकमणकारी (इन्क्रोचर), जिनको बेदखल किया जाना हो, हिमाचल प्रदेश भू-राजस्व अधिनियम, 1954 के अधीन सभी उपायों की समाप्ति के पश्चात्, हक के प्रश्न पर, सिविल न्यायालय में, अपने दावों को उठाते हैं। मूल और अपीली सिविल न्यायालयों में दावों के निर्धारण में काफी समय लग जाता है। इस प्रकार उक्त अधिनियम की धारा 163 के अधीन, राजस्व अधिकारी द्वारा किए गए आदेशों का क्रियान्वयन काफी समय के लिए रुका रहता है। वाद का परिणाम चाहे कुछ भी हो, ऐसे व्यक्ति ऐसे गोक-आदेशों और अपीलों इत्यादि द्वारा कार्यवाहियों में अत्यधिक देर करने में सफल होते हैं। सरकारी भूमि पर अंतर्धान अधिकमण (इन्क्रोचमट) को रोकने की वृद्धि से, राजस्व अधिकारियों को, हक के प्रश्न का विनियोग करने के लिए, यदि यह उनके समक्ष उठाया जाता है, सशक्त करने और उस प्रयोजन के लिए सिविल न्यायालयों की अधिकारिता का वर्जित करने का, प्रस्ताव है।

इसके अतिरिक्त, अधिनियम की धारा 163 की उप-धारा (1) के खण्ड (घ) के अधीन अधिकमण के लिए विहित जुर्माना पर्याप्त नहीं है, क्योंकि यह बहुत पहले विहित किया गया था। इसे भी बढ़ाए जाने की आवश्यकता है।
यह विधेयक उपर्युक्त उद्देश्यों की पूर्ति के लिए है।

धर्म सिंह,
प्रभारी मन्त्री।

शिल्पा :
31 मार्च, 1989

बिस्तीय ज्ञापन

हिमाचल प्रदेश भू-राजस्व अधिनियम, 1954 की धारा 163 का संशोधन, अन्य बातों के साथ-साथ प्रथम अधिकमण की दशा में जुर्माने की रकम को पांच सौ रुपये से बढ़ा कर एक हजार रुपये और पश्चात्वर्ती अधिकमण की दशा में, एक हजार रुपये से दो हजार रुपये करने के लिए है। इससे राज्य की आय में वृद्धि होगी, किन्तु इस समय इसकी मात्रा को निर्धारित नहीं किया जा सकता है।

प्रथमायोजित विधान सभान्धी ज्ञापन

[Authoritative English text of the Himachal Pradesh Bhoo-Rajasva (Sanshodhan) Vidheyak, 1989 (1989 ka Vidheyak Sankhyank 3) as required under Clause (3) of Article 348 of the Constitution of India]

Bill No. 3 of 1989,

THE HIMACHAL PRADESH LAND REVENUE (AMENDMENT) BILL, 1989

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A BILL

further to amend the Himachal Pradesh Land Revenue Act, 1954 (Act No. 6 of 1954).

Be it enacted by the Legislative Assembly of Himachal Pradesh in the Fortieth Year of the Republic of India as follows:—

Short title. 1. This Act may be called the Himachal Pradesh Land Revenue (Amendment) Act, 1989.

Amendment of section 163. 2. In section 163 of the Himachal Pradesh Land Revenue Act, 1954 (hereinafter called the principal Act),—

- (a) in clause (d) of sub-section (1), for the words “five hundred” and “one thousand”, the words “one thousand” and “two thousand” shall, respectively, be substituted;
- (b) after sub-section (2), the following sub-sections (3), (4), (5) and (6) shall be added, namely:—
- (3) When there is a question as to title or to the adverse possession, wherein the possession is claimed by an encroacher for a period beyond thirty years in relation to the land from which ejectment is made or is to be made under this section, the Revenue Officer, not below the rank of an Assistant Collector of the First Grade, shall proceed to determine the question, as if he were a civil court and shall exercise all such powers as are exercisable by a civil court.
- (4) For the determination of the question under sub-section (3), the Revenue Officer shall follow the same procedure as is applicable to the trial of an original suit by a civil court, and he shall record a judgement and decree containing the particulars required by the Code of Civil Procedure, 1908 to be specified therein.
- (5) An appeal from the decree of the Revenue Officer made under sub-section (4) shall lie to the District Judge as if that decree were a decree of a Subordinate Judge in an original suit.
- (6) A further appeal from the appellate decree of a District Judge upon an appeal under sub-section (5), shall lie to the High Court only if the High Court is satisfied that a substantial question of law is involved.”; and
- (c) the existing sub-section (3) shall be renumbered as sub-section (7).

Amendment of section 171.

3. The existing clause (xxv) of sub-section (2) of section 171 of the principal Act shall be renumbered as (xxvi) and before clause so

6 of 1954

5 of 1908

reumbered, the following clause shall be inserted, namely :—

"(xxv) any question, as to any land or any right to, or title or interest in, the land which is an encroached land or in relation to which any person claims that it has vested or is deemed to have vested in him and that he cannot be ejected therefrom under sub-section (1) of section 163; and".

STATEMENT OF OBJECTS AND REASONS

Section 163 of the Himachal Pradesh Land Revenue Act, 1954 empowers the Revenue Officers to eject person who encroach upon Government or common land. But it has been observed that the encroachers who are sought to be ejected, after exhausting all the remedies under the Himachal Pradesh Land Revenue Act, 1954, agitate their claims before the Civil Courts raising the question of title. The determination of the claims in original and appellate civil courts consume long time. As such the implementation of the orders made by the Revenue Officers under section 163 of the Act *ibid* remains held up for a long time. Whatever may be the result of the suit, such person do succeed to delay the proceedings inordinately, through stay orders and appeals etc. With a view to stopping the indiscriminate encroachment on Government land, it is proposed to empower the Revenue Officers to decide the question of title, if raised before them and to bar the jurisdiction of Civil Courts for that purpose.

Besides, the fine prescribed for encroachment under clause (d) of sub-section (1) of section 163 of the Act, is not adequate since it was prescribed long ago. It is also needed to be raised.

This Bill seeks to achieve these objectives.

DHARAM SINGH,
Minister-in-Charge.

SHIMLA:
The 31st March, 1989.

FINANCIAL MEMORANDUM

The amendment of section 163 of the H. P. Land Revenue Act, 1954 *inter alia*, seeks to enhance the amount of fine from Rs. 500 to Rs. 1000 in the case of first encroachment and from Rs. 1000 to Rs. 2000 in case of subsequent encroachment. This will increase the income of the State but the extent thereof can not be quantified at this stage.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Nil